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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 JOHN KERR, EDWARD LI, TIM  
11 BARNARD, and KENNETH CURTIS,  
12 individually and on behalf of all others  
13 similarly situated,

14 Plaintiffs,

15 v.

16 ZACKS INVESTMENT RESEARCH,  
17 INC., an Illinois corporation, NATIONAL  
18 MARKETING RESOURCES, LLC, a  
19 Missouri limited liability company;  
20 PARADIGM DIRECT LLC, a Delaware  
21 limited liability company; RESPONSE  
22 NORTH, LLC, a Utah limited liability  
23 company; ZACKS INVESTMENT  
24 MANAGEMENT, INC. an Illinois  
25 corporation; and DOES 6-50, inclusive,

26 Defendants.  
27  
28

Case No.: 16-CV-01352 GPC BLM

**ORDER:**

**(1) GRANTING FINAL APPROVAL  
OF SETTLEMENT;**

**(2) GRANTING MOTION FOR  
AWARD OF ATTORNEYS' FEES,  
LITIGATION EXPENSES, AND  
CLASS REPRESENTATIVE  
ENHANCEMENTS; AND**

**(3) ISSUING JUDGMENT**

**[DKT. NOS. 117 AND 118.]**

24 Pending before the Court is Plaintiffs' Unopposed Motion for Final Approval of  
25 Settlement and (2) Plaintiffs' Motion for Award of Attorneys' Fees, Litigation Expenses,  
26 and Class Representative Enhancements. Dkt. Nos. 117, 118. These Motions relate to the  
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28

1 Settlement between plaintiffs John Kerr (“Kerr”), Edward Li (“Li”), Tim Barnard  
2 (“Barnard”), Kenneth Curtis (“Curtis”), (collectively, “Plaintiffs”) and defendants Zacks  
3 Investment Management, Inc. (“ZIM”) and Zacks Investment Research, Inc. (“ZIR”)  
4 (together, “Zacks”); Response North, LLC (“Response North”); National Marketing  
5 Resources, LLC (“NMR”); and Paradigm Direct LLC (“Paradigm”) (collectively,  
6 “Defendants”).<sup>1</sup> Dkt. No. 108. A hearing was held as to this matter on April 6, 2018.

7 In December 2015, plaintiff Kerr saw a television commercial advertising a book  
8 entitled “How to Consistently beat the Market,” published by Zacks Investment Research  
9 (“ZIR”). Kerr called the telephone number and ordered the book. In February 2016, Kerr  
10 received a telephone call who said he was calling from Zacks and that there were other  
11 products and services that would assist in Kerr’s understanding of the book. Kerr’s  
12 complaint alleged that ZIR or its agents placed telephone calls in violation of the TCPA,  
13 and recorded certain telephone calls in violation of California’s Privacy Act. Dkt. No. 1.

14 The initial complaint was filed on May 6, 2016 in San Diego County Superior  
15 Court. Dkt. No. 1-2. On June 3, 2016, this Class Action was removed to the Southern  
16 District of California. Dkt. No. 1. On September 25, 2017, Plaintiffs submitted a Motion  
17 for Preliminary Approval of Settlement that was not opposed by either party. Dkt. No.  
18 108. This Court held a hearing on November 9, 2017, expressing concerns about the  
19 settlement and directed the parties to submit supplemental briefing. Dkt. No. 108, 115.  
20 On November 17, 2017, this Court granted Plaintiffs’ Motion for Preliminary Approval  
21 of Settlement and set a final approval hearing date for April 6, 2018. On February 8,  
22 2018, Plaintiffs filed a Motion for Attorney Fees, Litigation Expenses, and Class  
23 Representative Enhancements. Dkt. No. 117. On March 9, 2018, Plaintiffs filed a  
24 Motion for Final Approval of Settlement. Dkt. No. 118. On April 5, 2018, Plaintiffs  
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26 <sup>1</sup> Capitalized terms, not defined herein, have the same meaning as in the Settlement Agreement (Dkt.  
27 No. 108-3).

1 filed Supplemental Declarations of Zachariah P. Dostart and Abel Morales in Support of  
 2 Motion for Final Approval of Settlement. Dkt. Nos. 119-120.

### 3 **I. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

4 Plaintiffs and Class Counsel negotiated a \$5.48 million cash settlement to resolve  
 5 the TCPA and California Privacy Act claims asserted in this action. The Settlement  
 6 Administrator has received a total of 31,908 claims, with a claims rate of about 10.85%.  
 7 18 individuals requested exclusion from the settlement, for an opt-out rate of .006%. Zero  
 8 objections were filed.

#### 9 **A. PROPOSED SETTLEMENT<sup>2</sup>**

10 The proposed settlement applies to three different classes: (1) Zacks Class; (2)  
 11 Response North TCPA Class; and (3) Response North Privacy Class as defined below:  
 12

13 The “Zacks Class” is defined as follows:

14 “All natural persons nationwide who, between and including May 6, 2012 and June  
 15 30, 2017, received a telephone call that was (1) made to their cellular telephone and  
 16 (2) initiated by or on behalf of ZIR or ZIM using an automatic telephone dialing  
 system. Excluded from the Zacks Class are all employees of defendants, all  
 employees of defendants’ counsel, all employees of plaintiffs’ counsel, and judicial  
 officers, their family members, and court staff assigned to the Lawsuit.”

17 The “Response North TCPA Class” is defined as follows:

18 “All natural persons nationwide who received from Response North a telephone  
 19 call reflected in contact databases produced by Response North, which (1) was  
 placed as part of the Zacks Book Campaign and/or the Options Trading Campaign  
 and (2) was received on a cellular telephone. Excluded from the Response North  
 20 TCPA Class are all employees of Response North, all employees of Response  
 North’s counsel, all employees of plaintiffs’ counsel, and judicial officers, their  
 21 family members, and court staff assigned to the Lawsuit.”

22 The “Response North Privacy Class” is defined as follows:

23 “All California residents who received from Response North a telephone call  
 24 reflected in contact databases produced by Response North, which (1) was made on  
 a telephone line that was subject to recording by Response North and (2) was  
 received by the recipient in the State of California. Excluded from the Response  
 25 North Privacy Class are all employees of Response North, all employees of

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26 <sup>2</sup> The proposed settlement agreement (“Settlement”) was previously filed with the Court in support of  
 27 Plaintiff’s Motion for Preliminary Approval. See Dkt. No. 108-3.

1 Response North's counsel, all employees of plaintiffs' counsel, and judicial  
2 officers, their family members, and court staff assigned to the Lawsuit."

3 The monetary consideration consists of \$4,650,000 for the Zacks Class, and  
4 \$830,000 for the Response North Classes. Settlement § IV.A-B. Following final court  
5 approval and entry of judgment, each participating member of the Zacks Class will receive  
6 a pro-rata share of the Zacks Net Settlement Amount. Settlement § VIII.B. The Response  
7 North Net Settlement Amount will be allocated between Response North TCPA and  
8 Response North Privacy Class Members according to a point system described in Section  
9 VIII.C of the Settlement. Each Participating Class Member will be mailed a check  
10 representing that person's settlement payment no later than forty-five days after the  
11 Effective Date of the Settlement. Settlement VIII.D. Any portion of the settlement amount  
12 not distributed to participating class members at the end of 120 days will be paid to a court  
13 approved *cy pres* recipient. *Id.* Provided that the Effective Date occurs, Plaintiffs and  
14 participating class members, in addition to class members who do not timely request  
15 exclusion shall be deemed to have released and discharged Defendants from any and all  
16 claims defined in the Settlement Agreement Section IX as "Released Claims." Settlement  
17 IX.A, IX.B, IX.C.

## 18 **B. CLASS NOTICE AND CLAIMS ADMINISTRATION**

19 Following entry of the Preliminary Approval Order, on November 17, 2017, the  
20 Claims Administrator established an interest-bearing account to receive initial settlement  
21 deposits. Morales Decl. ¶ 3. The Claims Administrator received from counsel for Zacks  
22 Investment Research and Zachs Investment Management an Excel spreadsheet containing  
23 the names, addresses, telephone numbers, and emails of potential class members. Morales  
24 Decl. ¶ 3 The Claims Administrator identified a list of 293,968 records of which 266,705  
25 related to the Zacks Class, 11,678 related to the Response North TCPA Class, 13,823  
26 records related to the Response North Privacy Class, and 1,762 related to individuals who  
27 were members of both Response North Classes. Morales Decl. ¶ 4.  
28

On December 18, 2017, the Claims Administrator disseminated via email summary class notices to all individuals for whom an email address was available. Morales Decl. ¶ 5. When Class Notices were returned as undeliverable, the Claims Administrator attempted to mail those notices to individuals' mailing addresses. If email addresses were unavailable, the Claims Administrator sent the appropriate summary class notice via U.S. mail. In addition to email and mailed notices, the Claims Administrator caused publication notice to be published three times in the Wall Street Journal on December 30, 2017, January 6, 2018, and January 13, 2018. Morales Decl. ¶ 7, Ex. 5. The Claims Administrator created and has maintained a case-specific website for the Claims Administrator and Class Counsel, which contains contact information for the Claims Administrator and Class Counsel, as well as links to important documents concerning the proposed settlement at [kerrvzirsettlement.com](http://kerrvzirsettlement.com). Morales Decl. ¶ 8. Pursuant to the Preliminary Approval Order, class members had until February 16, 2018 to submit Claim Forms to the Claim Administrator. Dkt. No. 116. After processing the Claims Forms received from potential class members, the Claims Administrator determined that 31,908 claims are valid.<sup>3</sup> Supplemental Morales Decl. ¶ 5. These include 27,568 claims as to the Zacks Class, 2,879 claims as to the Response North Privacy Class, 1,251 claims as to the Response North TCPA class, and 210 claims who were part of both the Response North classes. Supplemental Morales Decl. ¶ 14. The Claims Administrator received 18 timely and valid requests for exclusion, of which 16 were members of the Zacks Class and 2 were members of the Response North Privacy Class. Supplemental Morales Decl. ¶ 9.

### C. LEGAL STANDARD FOR COURT APPROVAL

The Ninth Circuit maintains a "strong" judicial policy favoring the settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The

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<sup>3</sup> This includes an assumption that 2,874 claims received between February 17, 2018 and March 9, 2018 be deemed timely. Supplemental Morales Decl. ¶ 3.

1 policy of the federal courts is to encourage settlement before trial. *Franklin v. Kaypro*  
 2 *Corp.*, 884 F.2d 1222, 1225 (9th Cir. 1989). Federal Rule of Civil Procedure 23(e) first  
 3 “require[s] the district court to determine whether a proposed settlement is fundamentally  
 4 fair, adequate, and reasonable.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th  
 5 Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

## 6 **1. Class Certification**

7 Before approving a class action settlement, the Court must determine whether the  
 8 proposed class can be certified. *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). In  
 9 the Preliminary Approval Order, this Court considered the requirements for class  
 10 certification under Rule 23 and found that, for purposes of the settlement in this Action,  
 11 the prerequisites for class certification are satisfied. *See* Dkt. No. 116 at 2-4. The Court  
 12 hereby reaffirms those findings.

## 13 **2. Final Fairness Determination**

14 The Court must make a determination of whether the class-action settlement is “fair,  
 15 reasonable, and adequate” pursuant to Rule 23(e)(1)(C). “It is the settlement taken as a  
 16 whole, rather than the individual component parts, that must be examined for overall  
 17 fairness.” *Hanlon*, 150 F.3d at 1026. The Court looks to several factors including: “the  
 18 strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further  
 19 litigation, the risk of maintaining class-action status throughout the trial; the amount  
 20 offered in settlement; the extent of discovery completed and the stage of the proceedings;  
 21 the experience and views of counsel; the presence of a governmental participant; and the  
 22 reaction of the class members to the proposed settlement.” *Hanlon*, 150 F.3d at 1026. The  
 23 parties’ settlement agreement complies with these requirements.

### 24 **a) Strength of Plaintiff’s Case and Risk of Further** 25 **Litigation**

26 Further litigation would have entailed significant risk for Plaintiffs. Defendants  
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1 asserted defenses including that the equipment used in this case to make telephone calls  
 2 did not constitute an ATDS as defined by the TCPA, an issue that was to be decided by the  
 3 D.C. Circuit in *ACA International v. FCC*. Absent a settlement, this decision could have  
 4 adversely affected Plaintiffs' TCPA claims.

5 Defendants would have also asserted defenses to oppose class certification,  
 6 including the argument that the "leads" were previously provided by individuals who had  
 7 provided their telephone numbers through the ZIR website or through prior transactions.  
 8 Thus, Plaintiffs faced the risk of failing to certify their classes. *See Connelly v. Hilton*  
 9 *Grand Vacations Co., LLC*, 294 F.R.D. 574, 578 (S.D. Cal. Oct. 29, 2013). Plaintiffs could  
 10 have faced similar challenges in certifying a Response North Privacy Class in that  
 11 Response North argued that it had a policy that representatives would advise participants  
 12 that a call was being recorded and that the calls did not involve confidential  
 13 communications. Such an argument could have led to a denial of class certification as well.  
 14 *See, e.g., Quesada v. Bank of Am. Invs. Servs.*, 2013 U.S. Dist. LEXIS 32588 (N.D. Cal.  
 15 Feb. 19, 2013). Moreover, absent a settlement the parties would have faced years of  
 16 litigation with substantial expenditures of time and resources without a guarantee of  
 17 recovery for class members. Accordingly, the strength of plaintiffs' case and the risk of  
 18 further litigation weigh in favor of approval of this settlement.

#### 19 **b) Amount of the Proposed Settlement**

20 The settlement amounts provide a strong monetary recovery for all participating  
 21 class members. Each Participating Zacks Class Member will receive \$111.95, each  
 22 Participating Response North TCPA Class Member will receive \$68.39, each Participating  
 23 Response North Privacy Class Member will receive approximately \$227.99, and  
 24 individuals who are members of both classes will receive approximately \$296.38.  
 25 Supplemental Dostart Decl. ¶ 9.

26 These numbers show that the settlement provides real value to class members,  
 27  
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1 particularly in comparison to other TCPA and Privacy Act cases. *See Couser v. Comenity*  
 2 *Bank*, 125 F. Supp. 3d 1034, 1043 (S.D. Cal. May 27, 2015) (\$13.75 per claimant post-  
 3 claims payment approved).

4 **c) Extent of Discovery Completed and Stage of the**  
 5 **Proceedings**

6 Plaintiffs assert that discovery in this action was extensive and hard-fought.  
 7 Plaintiffs' requests in discovery included: (1) four sets of interrogatories totaling sixty  
 8 interrogatories; (2) eight sets of requests for production totaling 164 requests. Defendants  
 9 requested (1) four sets of interrogatories totaling sixty eight interrogatories; (2) four sets of  
 10 requests for production totaling 176 requests. This process involved the production and  
 11 review of tens of thousands of pages of documents, and included informal exchanges  
 12 during the mediation process. Dostart Decl. ¶ 11.

13 Given the extent of discovery, the Court concludes that there was sufficient  
 14 information available to enable the Parties to adequately evaluate their case and that this  
 15 factor weighs in favor of approval of the Settlement.

16 **d) Experience and Views of Class Counsel**

17 Dostart Hannick & Coveney LLP has been appointed lead or co-lead counsel in more  
 18 than 50 certified class actions. Dostart Decl. ¶ 4. The attorneys handling this issue  
 19 specialize in class action litigation and the firm focuses on class action litigation on behalf  
 20 of consumers. Dostart Decl. ¶¶ 2-4. Class Counsel also declares in their opinion that the  
 21 settlement is "fair, reasonable, and in the best interests of class members." Dostart Decl. ¶  
 22 12. Giving the appropriate weight to class counsel's recommendation, the Court concludes  
 23 that this factor weighs in favor of approval. *See Boyd v. Bechtel Corp.*, 485 F. Supp. 610,  
 24 622 (N.D. Cal. 1979).

25 **e) Presence of a Government Recipient**

26 No governmental entity is a party to this litigation and the U.S. Attorney General  
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1 and California Attorney General were provided a CAFA notice regarding the settlement on  
 2 October 2, 2017. Dostart Decl. ¶ 13, Ex. 1. No governmental agency has responded.  
 3 Accordingly, this factor is not relevant to the approval of this settlement.

#### 4 **f) Reaction of the Class to the Settlement**

5 The “absence of a large number of objections to a proposed class action settlement  
 6 raises a strong presumption that the terms of a proposed class settlement action are  
 7 favorable to the class members.” *Nat’l Rural Telecommunications Coop. v. DIRECTV,*  
 8 *Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). Here, *no* objections have been filed and only  
 9 19 class members timely opted out, representing an opt-out rate of .006%. Morales Decl.  
 10 ¶ 16; *DIRECTV*, 221 F.R.D. at 529 (“The absence of a single objection to the Proposed  
 11 Settlement provides further support for final approval of the Proposed Settlement.”).  
 12 Moreover, the high claims rate of 10.85% weighs in strong favor of final approval. *See*  
 13 *Couser v. Comenity Bank*, 125 F. Supp. 3d 1034, 1043-44 (S.D. Cal. May, 27, 2015)  
 14 (describing 7.7% claims rate as a higher than average claims rate and approving a “low  
 15 end” \$13.75 TCPA recovery because of the high claims rate).

16 Accordingly, the reaction of the class to the settlement—including no objections,  
 17 minimal opt-outs, and a high claim rate—weighs heavily in favor of final approval.

#### 18 **g) Conclusion**

19 Based on the foregoing, the Court concludes the proposed settlement is fair,  
 20 reasonable, and adequate. There are no objections to the settlement, and there is no  
 21 evidence the settlement resulted from collusion between the parties. *See* Dostart Decl. ¶¶  
 22 5-11. Rather, Counsel’s declaration indicates the settlement negotiations were at all  
 23 times adversarial, non-collusive, and conducted at arms-length. Accordingly, the  
 24 settlement is approved.

## II. MOTION FOR AWARD OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE ENHANCEMENTS

On February 8, 2018, Plaintiffs' filed a motion for award of attorneys' fees, litigation expenses, and class representative enhancements. Dkt. No. 117.

### A. Attorneys' Fees

Class counsel requests a fee award of 25% of the settlement fund, which equals to \$1,370,000.

Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1175 (S.D. Cal. 2007) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003)). Where, as here, the parties establish a common fund to settle a class action, courts have discretion to choose either the "percentage" method or the "lodestar/multiplier" method to determine a reasonable attorneys' fee. *See Hanlon v. Chrysler Group*, 150 F. 3d 1011, 1029 (9th Cir. 1998); *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997). The Ninth Circuit has held that, regardless of whether a court "applies the lodestar or the percentage method, 'we require only that fee awards in common fund cases be reasonable under the circumstances.'" *Id.* (quoting *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990)) (emphasis in original); *see Staton*, 327 F.3d at 963.

Under the percentage method, Plaintiffs' request for attorneys' fees in the amount of twenty-five percent of the Settlement Funds is in line with this Circuit's benchmark amount. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989). The results achieved by class counsel represent a strong recovery for the class in that each member of the Zack Class will receive \$111.95, each member of the Response North TCPA class will receive \$68.39, each member of the Response North Privacy

1 Class will receive \$227.99, and members of both Response North classes will receive  
2 \$296.38. These results compare favorably to other similar settlements. *See Kramer v.*  
3 *Autobytel, Inc.*, 2012 US. Dist. LEXIS 185800, at \*2, 13 (N.D. Cal. Jan. 27, 2012) (final  
4 approval of \$12.2 million settlement for class with 47 million individuals); *Malta v. Fed.*  
5 *Home Loan Mortg. Corp.*, 2013 U.S. Dist. LEXIS 15731, at \*11, \*30 (S.D. Cal. Feb. 5,  
6 2013) (preliminary approval of \$17.1 million settlement for class consisting of 5,887,508  
7 members or \$2.90 per class member). Moreover, there was substantial risks of litigation  
8 including the Defendants' contention that dialing equipment should not be classified as  
9 an "automatic telephone dialing system" and that Plaintiffs would not be able to establish  
10 a lack of consent. Defendants raised arguments under *Wal-Mart Stores, Inc v. Dukes*,  
11 131 S. Ct. 2541, 2551 (2011), regarding whether Plaintiffs would lose a contested class  
12 certification motion.

13 The Court next looks at the skill required and quality of work. Defendants are  
14 represented by prominent law firms with significant complex litigation experience, and  
15 this action involved extensive discovery and motion practice, thus demonstrating Class  
16 Counsel's favorable settlement despite this opposition. *See In re Equity Funding Corp.*  
17 *Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977 (recognizing the importance of  
18 evaluating plaintiffs' attorneys in light of quality of opposing counsel). Moreover, the  
19 contingent nature of the fee in this case justifies a benchmark 25% award. *See In re*  
20 *WPPSS*, 19 F.3d at 1299-30. Finally, awards in similar cases have awarded attorneys'  
21 fees in the benchmark range. *See Barani v. Wells Fargo Bank, N.A.*, No. 3:12-cv-02999  
22 (S.D. Cal. Dec. 18, 2012); *Stemple v. QC Holdings, Inc.*, No. 3:12-cv-01997 (S.D. Cal.  
23 Aug. 13, 2012); *Mcdonald v. Bass Pro Outdoor World, LLC*, No. 13-cv-889-BAS-DHB  
24 (S.D. Cal. Dec. 18, 2014). Accordingly, a 25% benchmark fee is justified under the  
25 percentage method.

Under the lodestar method, Plaintiffs' request for attorneys' fees is also reasonable. To date, Class Counsel has incurred approximately \$979,577.50 in hourly fees. Dostart Decl. ¶ 23. Dividing the requested fee of \$1,370,000 by that amount yields a multiplier of 1.4, which is *below* that which is commonly approved by other courts. *See Couser v. Comenity Bank*, 125 F. Supp. 3d. 1034, 1049 (S.D. Cal. 2015) (2.8 multiplier); *Adams v. AllianceOne, Inc.*, No. 3:08-cv-0248-JAH-WVG (S.D. Cal. Sept. 28, 2012) (3.81 multiplier). Accordingly, the lodestar cross-check also supports an award of benchmark attorneys' fees.

Pertinently, no class members have objected to Plaintiffs' fee request, disclosed in the settlement notice sent to Class Members. Moreover, Plaintiffs' counsel specifically filed their motion for fees in advance of the February 16, 2018 objection deadline to allow class members an opportunity to review their fee requests, a practice that conforms to the standard set forth in *Mercury Interactive Corp. Sec. Litig. v. Mercury Interactive Corp.*, 618 F.3d 988, 994-95 (9th Cir. 2010).

Accordingly, the Court will **GRANT** Plaintiffs' request for \$1,370,000 in attorneys' fees, as these fees are reasonable under both the percentage method and lodestar method.

## **B. Reimbursement of Litigation Expenses**

Class Counsel seeks reimbursement of \$50,166.79 for expenses in the following categories: (a) copy charges; (b) deposition expenses; (c) filing, service and messenger fees; (d) postage and express mail; (e) professional fees (mediation and consultant fees); (f) research; (g) travel. Professional fees included mediation fees for two full-day mediations with retired Magistrate Judge Papas. Dkt. No. 117 at 15. In a common fund settlement, class counsel is entitled to recover reasonable expenses incurred in prosecuting the litigation. *In re Immune Responsive Securities Litigation*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007).

1 The Court finds the expenses to be reasonable and necessary. Filing fees, copy fees,  
 2 and postage are necessary expenses of litigation. *See Harris v. Marhoefer*, 24 F.3d 16, 19  
 3 (9th Cir. 1994); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1368 (N.D. Cal.  
 4 1996). Messenger fees are also recoverable as costs. *Immune Response*, 497 F. Supp. 2d.  
 5 at 1177. Costs regarding deposition transcripts have been found to be reimbursable  
 6 expenses. *Arredondo v. Delano Farms Co.*, No. 1:09-CV-01247-MJS, 2017 WL 4340204,  
 7 at \*8 (E.D. Cal. Sept. 29, 2017). Computerized legal research is an essential modern tool  
 8 of a modern efficient law office and constitutes a reimbursable expense. *See Robinson v.*  
 9 *Ariyoshi*, 703 F. Supp. 1412, 1436 (D. Haw. 1989). Mediation fees are a reimbursable  
 10 expenses in common fund cases. *Immune Responsive*, 497 F. Supp. 2d. at 1177 (citing  
 11 *Lenahan v. Sears, Roebuck and Co.*, 2006 WL 2085282, \*22 (D. N.J. 2006); *Yong Soon*  
 12 *Oh v. AT & T Corp.*, 225 F.R.D. 142, 154 (D. N.J. 2004); *Carrabba v. Randalls Food*  
 13 *Markets, Inc.*, 191 F.Supp.2d 815, 834 (N.D. Tex. 2002)). Reimbursement for travel  
 14 expenses it within the broad discretion of the court. *See In re Immune Response Securities*  
 15 *Litigation*, 497 F. Supp. 2d at 1177 (citing *Media Vision*, 913 F. Supp. at 1369)).  
 16 Investigative consulting services have been found to be reimburseable costs. *See In re*  
 17 *Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1367 (N.D. Cal. 1996). The Court will  
 18 take note that attorney Zach P. Dostart has attested that these expenses were reasonably  
 19 incurred during the prosecution of this class action. Dostart Decl. ¶ 28-29.

20 Accordingly, the Court will **GRANT** counsel's request for reimbursement expenses  
 21 in the amount of \$50,166.79.

### 22 **C. Class Representative Enhancements**

23 Plaintiffs seek incentive awards for each Class Representative. Plaintiffs seek the  
 24 following incentives for each plaintiff: Kerr (\$10,000); Li (\$4,500), Barnard (\$4,500),  
 25 Curtis (\$4,500), Johnson (\$2,000), Abjanic (\$2,000), Cares (\$2,000). Incentive awards are  
 26 designed to "compensate class representatives for work done on behalf of the class, to make  
 27  
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up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958–59. “Incentive awards are fairly typical in class action cases,” but are ultimately “discretionary.” *Id.* at 958.

In deciding whether to approve an incentive award, courts consider factors including:

- 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

*Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). The district court must evaluate incentive awards individually. *See Staton*, 327 F.3d at 977.

Plaintiffs assert that each Class Representative expended significant amounts of time and effort to represent the interest of Class Members. Plaintiffs detail each Class Representative’s specific contributions, as follows:

**a) Kerr**

Plaintiffs seek a \$10,000 Class Representative award for John Kerr, who has worked in the financial services industry for over 34 years and is currently a Senior Vice President of Wealth Management with UBS Financial Services Inc. Dostart Decl. ¶ 31. Kerr consulted with Class Counsel at the onset of this matter and commenced the litigation. *Id.* Kerr responded to interrogatories and requests for production served by ZIR and assisted Class Counsel in evaluating information provided by defendants in response to discovery. Plaintiffs assert that Kerr has communicated with Class Counsel on a regular basis. *Id.*

**b) Li, Barnard, and Curtis**

Plaintiffs Li, Barnard, and Curtis were added as named Plaintiffs in October 2016 upon the filing of the Second Amended Complaint. Dostart Decl. ¶ 32. Each responded to



1 interrogatories and requests for production of documents served by ZIR in May 2017 and  
 2 have communicated with Class Counsel on a regular basis. Dostart Decl. ¶ 32.

3 **c) Johnson, Abjanic, and Cares**

4 Plaintiffs Johnson, Abjanic, and Cares were formally added as named plaintiffs in  
 5 September 2017 upon the filing of the Third Amended Complaint. Dostart Decl. ¶ 33.<sup>4</sup>  
 6 Yet, they contributed significantly to the resolution of the action as Class Counsel  
 7 identified these three individuals as potential additional named plaintiffs after two in-  
 8 person mediation sessions had failed to lead to a settlement. *Id.* Their willingness to  
 9 participate demonstrated to defense counsel that despite challenges as to then-existing  
 10 plaintiffs, there were additional individuals willing and able to pursue the action. *Id.*  
 11 Attorney Dostart asserts his belief that the addition of Johnson, Abjanic, and Cares gave  
 12 “additional impetus to the settlement discussions.” *Id.*

13 The Court concludes that the requested class representative enhancements are  
 14 reasonable and in line with awards in other cases. Significantly, there is no opposition to  
 15 any of the requested enhancement awards by other class members. Kerr, Li, Barnard, and  
 16 Curtis, appear to have provided significant roles in the litigation by reviewing documents,  
 17 responding to discovery, and remaining in communication with counsel. The additional  
 18 plaintiffs Johnson, Abjanic, and Cares appear to have played an important role in settlement  
 19 negotiations by demonstrating the willingness of other plaintiffs to continue the litigation  
 20 in light of potential problems with the other named plaintiffs. Plaintiffs’ efforts appear to  
 21 have resulted in a significant settlement for class members.

22 In light of the requests, the Court finds that the class representative enhancements  
 23 are reasonable and in line with enhancements awarded in other cases. *See McDonald v.*  
 24

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25  
 26 <sup>4</sup> Plaintiffs initially sought to add Johnson, Abjanic, and Cares as named plaintiffs on July 12, 2017, but  
 27 that filing was stricken on a procedural basis. All parties understood during settlement negotiations that  
 28 Johnson, Abjanic, and Cares would be added as named plaintiffs. Dostart Decl. ¶ 33.

1 *Bass Pro Shops*, 13-cv-889-BAS-DHB (S.D. Cal. Dec. 18, 2014) (\$20,000 enhancement  
 2 in \$6,000,000 settlement). *See Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS  
 3 53416, at \*25 (S.D. Cal. June 1, 2010) (\$25,000 incentive award in case with settlement  
 4 fund of \$548,775.00); *In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-2509-LHK, 2014  
 5 U.S. Dist. LEXIS 184827, at \*16 (N.D. Cal. May 16, 2014) (approving five service awards  
 6 totaling \$100,000 in a \$20,000,000 settlement). Accordingly, the Court will **GRANT**  
 7 Plaintiffs' requests for class representative enhancements.

## 8 9 CONCLUSION

10 For the foregoing reasons, it is **HEREBY ORDERED**:

- 11 1. The Court has subject matter jurisdiction over the Action and personal  
 12 jurisdiction over all settling parties.
- 13 2. All defined terms in this Final Approval Order shall have the same meanings  
 14 as in the Settlement Agreement.
- 15 3. All preliminary findings and conclusions in the Court's Preliminary  
 16 Approval Order are hereby made final.
- 17 4. The Court reaffirms certification of the following three classes:

18 The "Zacks Class" is defined as follows:

19 "All natural persons nationwide who, between and including May 6, 2012 and June  
 20 30, 2017, received a telephone call that was (1) made to their cellular telephone and  
 21 (2) initiated by or on behalf of ZIR or ZIM using an automatic telephone dialing  
 22 system. Excluded from the Zacks Class are all employees of defendants, all  
 23 employees of defendants' counsel, all employees of plaintiffs' counsel, and judicial  
 24 officers, their family members, and court staff assigned to the Lawsuit."

25 The "Response North TCPA Class" is defined as follows:

26 "All natural persons nationwide who received from Response North a telephone  
 27 call reflected in contact databases produced by Response North, which (1) was  
 28 placed as part of the Zacks Book Campaign and/or the Options Trading Campaign  
 and (2) was received on a cellular telephone. Excluded from the Response North  
 TCPA Class are all employees of Response North, all employees of Response  
 North's counsel, all employees of plaintiffs' counsel, and judicial officers, their  
 family members, and court staff assigned to the Lawsuit."

1 The “Response North Privacy Class” is defined as follows:

2 “All California residents who received from Response North a telephone call  
3 reflected in contact databases produced by Response North, which (1) was made on  
4 a telephone line that was subject to recording by Response North and (2) was  
5 received by the recipient in the State of California. Excluded from the Response  
6 North Privacy Class are all employees of Response North, all employees of  
7 Response North’s counsel, all employees of plaintiffs’ counsel, and judicial  
8 officers, their family members, and court staff assigned to the Lawsuit.”

9 5. The Court reaffirms its finding that the Classes meet the requirements for  
10 certification under Fed. R. Civ. P. 23(a) and 23(b)(3). Plaintiffs and Class Counsel  
11 have fairly and adequately protected the interests of the Class Members

12 6. The Court finds that notice of the Settlement was properly disseminated to  
13 Class Members via e-mail, mail, and publication in accordance with the Preliminary  
14 Approval Order. The Court further finds that the notice procedure implemented in  
15 this Action provides for the best notice practicable under the circumstances, and  
16 that such notice procedure satisfies Fed. R. Civ. P. 23(c)(2)(B) and the requirements  
17 of due process.

18 7. The Court finds that, having been properly notified of the Settlement, no  
19 Class Member has objected to any aspect of the Settlement, including the proposed  
20 award of attorneys’ fees, litigation expenses, and enhancements to the named  
21 plaintiffs/class representatives.

22 8. The Court finds that 18 individuals submitted timely and valid requests for  
23 exclusion from the Settlement. Those 18 individuals are listed on Appendix A  
24 hereto. Those 18 individuals are excluded from the Settlement, will not participate  
25 in the Settlement, and will not be bound by the Settlement’s release.

26 9. The Court finds that the CAFA notice required by 28 U.S.C. § 1715 was  
27 served on October 2, 2017 on the United States Attorney General and the  
28 appropriate State officials. This Final Approval Order is being entered more than  
90 days after the CAFA notice was served.

1           10. The Court grants the motion for final approval of the Settlement. After  
2           considering all pertinent factors, the Court finds that the Settlement is fair,  
3           reasonable, and in the best interests of the Class Members. In evaluating the  
4           Settlement, the Court has considered the strength of plaintiffs' case; the risk,  
5           expense, complexity, and likely duration of further litigation; the risk of  
6           maintaining class action status throughout the trial; the amount offered in  
7           settlement; the extent of discovery completed and the stage of the proceedings; the  
8           experience and views of counsel; and the reaction of Class Members to the  
9           Settlement. The Court finds that the Settlement has been reached as a result of  
10          intensive, serious, and non-collusive arm's-length negotiations.

11          11. The Court grants Class Counsel's motion for an award of attorneys' fees in  
12          the amount of \$1,370,000, plus reimbursement of litigation expenses in the amount  
13          of \$50,166.79, all of which shall be paid proportionally from the Zacks Monetary  
14          Consideration and the Response North Monetary Consideration. The Court finds  
15          that the attorneys' fees are justified as a percentage of the class recovery under the  
16          common fund doctrine, and under the lodestar/multiplier approach.

17          12. The Court grants the request for service payment enhancements to the named  
18          plaintiffs and class representatives as follows: \$10,000 to John Kerr; \$4,500 each  
19          to Edward Li, Tim Barnard, and Kenneth Curtis; and \$2,000 each to Lia Johnson,  
20          John Abjanic, and Arnold Cares. The Court finds that the foregoing payments are  
21          justified in light of the benefit conferred, the time spent, and the risk that the  
22          respective plaintiffs/class representatives undertook in representing the interests of  
23          the Class Members.

24          13. The parties are ordered to carry out the Settlement in the manner provided in  
25          the Settlement Agreement.

1           14. The Settlement Administrator shall proceed with distribution to the  
2 Participating Class Members, in accordance with the Settlement Agreement.

3  
4                           **JUDGMENT**

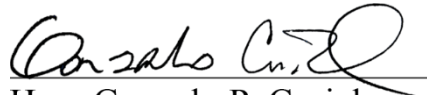
5           15. This Action is terminated with prejudice.

6           16. Plaintiffs and all Class Members who have not timely requested exclusion  
7 from the Settlement, as well as their respective assigns, executors, administrators,  
8 successors and agents, have released, resolved, relinquished, and discharged each  
9 and all of the Released Parties from each of the Released Claims, as set forth in  
10 Section IX of the Settlement Agreement.

11           17. Without affecting the finality of this Judgment, the Court hereby retains  
12 continuing jurisdiction over the parties and the Class Members to effectuate and  
13 ensure compliance with the Settlement Agreement and this Order.

14           **IT IS SO ORDERED.**

15  
16 Dated: April 9, 2018

17   
18 Hon. Gonzalo P. Curiel  
19 United States District Judge  
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**APPENDIX A*****Kerr, et al. v. Zacks Investment Research, Inc., et al.*****No. 16-CV-01352 GPC BLM**

The following individuals are excluded from the Settlement:

	<u>Name</u>	<u>Class</u>
1.	Blake Carlin	Zacks Class
2.	Garrett Davis	Zacks Class
3.	Robert Englmeier	Zacks Class
4.	Scott Grilley	Zacks Class
5.	Gizella Halmagian	Zacks Class
6.	Henry Hays	Zacks Class
7.	Christopher Jones	Zacks Class
8.	Kevin Kangas	Zacks Class
9.	Phil Martino	Zacks Class
10.	Pam Medellin	Zacks Class
11.	George Pappas	Zacks Class
12.	Jim Roginski	Zacks Class
13.	Charles Simon	Zacks Class
14.	Linh Tran	Zacks Class
15.	Shirley Wallace	Zacks Class
16.	Jon Yun	Zacks Class
17.	Darleen Haynes	Response North Privacy Class
18.	Rebecca Torrence	Response North Privacy Class